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January 10, 2006

The Honorable Arlen Specter  
Chairman,  
Committee on the Judiciary  
United States Senate  
711 Hart Office Building  
Washington, D.C. 20510

The Honorable Patrick Leahy  
Ranking Member,  
Committee on the Judiciary  
United States Senate  
433 Russell Office Building  
Washington, D.C. 20510

Dear Chairman Specter and Ranking Member Leahy:

Americans United for Separation of Church and State urges you to oppose the confirmation of Judge Samuel A. Alito, Jr. to be Associate Justice of the Supreme Court of the United States. Americans United for Separation of Church and State represents more than 75,000 individual members and 9,500 clergy nationwide, as well as cooperating houses of worship and other religious bodies committed to the preservation of religious liberty. We oppose the confirmation of Judge Alito to the Supreme Court because his record demonstrates that he would fundamentally alter First Amendment law and immediately put at risk many of the crucial protections for religious minorities that the Supreme Court has recognized and consistently enforced over the past sixty years.

Legal scholars have understood the First Amendment's religion clauses as striking a balance between the religious and political rights of individuals and groups within our society. There is a necessary tension between the Free Exercise Clause and the Establishment Clause, which serves to balance the sometimes competing interests of individuals' freedom of conscience against the requirement that the state be neutral with respect to religious viewpoints. Justice O'Connor has been successful in ensuring that public expression did not turn into government favoritism or state coercion of religious beliefs.

During his fifteen year tenure on the United States Court of Appeals for the Third Circuit, however, Judge Alito has shown himself to have a view of the First Amendment, particularly of the Establishment Clause, that differs dramatically from both Justice O'Connor's judicial philosophy and the settled understanding of fundamental Establishment Clause principles that has guided the Supreme Court's decisions for at least six decades. Indeed, early on, Judge Alito acknowledged his disagreement with the Supreme Court on its Establishment Clause jurisprudence. When applying for a position in the Reagan Administration Department of Justice, Judge Alito declared that his "deep interest in constitutional law [was] motivated in large part by disagreement with the Warren Court decisions, particularly in areas [such as] the Establishment Clause . . . ." As evidenced by his longstanding appeals court record, we remain concerned that such a motivation taints his view today.

There is much at stake for the future of religious liberty as a result of Justice O'Connor's retirement and Judge Alito's nomination to take her place on the Supreme Court. As Justice O'Connor has recognized, it is vital that our longstanding Establishment Clause protections remain in place:

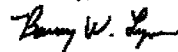
At a time when we see around the world the violent consequences of the assumption of religious authority by government, Americans may count themselves fortunate: Our regard for constitutional boundaries has protected us from similar travails, while allowing private religious exercise to flourish . . . Those who would renegotiate the boundaries between church and state must therefore answer a difficult question: Why would we trade a system that has served us so well for one that has served others so poorly? (*McCreary County, Kentucky v. ACLU of Kentucky*, 125 S. Ct. 2722, 2746 (O'Connor, J., concurring)).

In the Establishment Clause area, replacing Justice O'Connor with Judge Alito likely would have a profound effect on the religious freedoms that our dual constitutional commitments to free exercise and separation of church and state have long ensured. Both the straightforward holdings and the underlying tenor of Judge Alito's decisions in Establishment Clause cases contrast sharply with Justice O'Connor's views. Throughout her career on the Court, Justice O'Connor has been keenly attuned to the plight of religious minorities in society as a whole, and most especially in the public schools. But Judge Alito's focus has been elsewhere: on religious majorities' ability to express their views through governmental instrumentalities, at government owned facilities, and in government-organized enterprises like the public schools. Judge Alito has given broad license to religious majorities to use the public schools and other official settings to broadcast their religious messages without regard for the competing rights and interests of religious minorities.

Because Judge Alito has not extended the same protections to all Americans that he has granted to politically powerful religious majorities, the Senate should decline to confirm his appointment as an associate justice of the U.S. Supreme Court.

If you have any questions on Americans United's position on this nomination, please contact Aaron D. Schuham, Legislative Director, at (202) 466-3234.

Sincerely,



Rev. Barry W. Lynn  
Executive Director